

SPECIAL MILTON TOWN COUNCIL MEETING

MILTON, DELAWARE

SPECIAL TOWN COUNCIL MEETING)
)
JUNE 12, 2007)

BEFORE:

MAYOR DON POST,
COUNCILMAN NOBLE PRETTYMAN,
COUNCILWOMAN RONDA MELSON ABRAHAM,
COUNCILMAN JOHN FREY,
COUNCILWOMAN MARY HUDSON.

ALSO PRESENT:

JOHN F. BRADY, ESQUIRE
Milton Town Solicitor.

MR. GEORGE DICKERSON,
Milton Town Manager.

ANTHONY REPORTING
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1 MAYOR POST: Okay. I'm going to open the
2 public comment on Tuesday, June 12th at 7:00 p.m. And
3 let it go on record that Councilman Prettyman,
4 Councilwoman Melson, Councilman Frey, Councilwoman
5 Melson, and myself --

6 COUNCILWOMAN HUDSON: Hudson.

7 MAYOR POST: -- or Hudson -- I always forget
8 Abraham -- Councilwoman Abraham, and myself is present.
9 Absent is Councilwoman Betts and Councilman Harris.

10 What's that? And then we read it in. And
11 since we have no public comments, we will close at 7:01.
12 And then we will reconvene at 7:15.

13 (Following a recess:)

14 MAYOR POST: Calling to order at 7:15 the
15 Special Council Meeting on Tuesday, June 12, 2007. Let
16 it go on record that Councilman Frey, Councilwoman
17 Hudson, Councilwoman Abraham, Councilman Prettyman, and
18 myself as Mayor are present. Absent is Councilman
19 Harris and Councilwoman Betts.

20 And if you will stand for a moment of
21 silence, led by Councilwoman Abraham.

22 (Following a moment of silence:)

23 MAYOR POST: Remain standing for the Pledge
24 of Allegiance.

1 (Following the Pledge of allegiance:)

2 MAYOR POST: I did that after the roll call.
3 I've done roll call. I always do that. I get out --
4 Any additions or corrections to the agenda?

5 COUNCILWOMAN HUDSON: I have a question. I
6 don't know if it's -- exactly what it is, an addition or
7 a deletion. I question whether this meeting was
8 properly noticed, because originally, it said Tidewater
9 Resolution Contract Due Diligence Extension. Then it
10 said approval of Wastewater Services Agreement
11 Amendment. And I think that's oversimplified, because
12 there are substantive changes and substantial changes in
13 the amendment that effect millions and millions of
14 dollars.

15 And back on February 24th, when this was --
16 there was a special meeting then and a public hearing.
17 And there was a considerable description of what was
18 going to be presented. The terms of the contract
19 include operating the current wastewater treatment plant
20 and the purchasing the plant from the Town, use of the
21 infrastructure within town limits, purchase of said
22 infrastructure, use of the current easement for
23 utilities within town limits, license to operate same,
24 and other appropriate related contract terms, including

1 environmental, DNREC indemnification for the use of the
2 Town-controlled lands as a site for a modern treatment
3 facility to be used by Tidewater for the benefit of the
4 Town of Milton and other related contract rules, terms
5 to benefit the Town of Milton. That was considerably
6 more than just saying due diligence extension or
7 Amendment No. 1.

8 It does not give, I don't think -- In my
9 opinion, it doesn't give the people the appropriate
10 information to make a decision to show up. We don't
11 even have the press here tonight, with very few people.

12 And because this clause in this amendment,
13 TESI shall not pay to the Town the \$1,500 fee for new
14 customer connections in the growth area, under paragraph
15 number 14 in the agreement, the 1,500 connection fee for
16 the service within the Town of Milton's boundaries shall
17 remain payable in accordance with the agreement, that is
18 considerably different than what the public was told
19 back on February 24th.

20 Everything you see in the Comprehensive Plan
21 is in the Town of Milton's growth area. And not only
22 that, through this contract, whether it's annexed or not
23 annexed, the Town will receive \$1,500 per unit. I'm
24 quoting Mayor Post. So that's a revenue builder for the

1 Town, which is a very big thing for me over the past
2 couple of years, to try to secure financial security for
3 this Town.

4 So originally, everybody was told that we
5 were going to get 1,500 per unit, annexed or not
6 annexed. And that's millions and millions of dollars.
7 And now we are being told that we're only going to
8 receive 1,500 for connection fees for service within the
9 Town's boundary.

10 And I would not think that people comprehend
11 the enormity of the change that -- changes that are in
12 this amendment. And I don't think it was properly
13 noticed. I think we should postpone this until it can
14 be properly noticed. I would hate to think that the
15 town would be embarrassed by another FOIA complaint, so
16 I was just bringing it to your attention that perhaps we
17 should reschedule this and give it a lot more
18 description so people know what this is about.

19 MAYOR POST: You know, Councilwoman Hudson,
20 I would like to comment on that, since you referred my
21 name into the amount of the \$1,500. And you're exactly
22 correct. The talk about public notice, the issue over
23 the \$1,500, you can thank your state senators and
24 representatives, because why the contract has been

1 changed is because the State of Delaware is changing it.
2 It has nothing to do with us. They rewrote the law,
3 because we enforce the law. And since they had some
4 strong lobbyists up there in Dover -- and I would
5 question who they are, but we certainly will find out --
6 they have fast-tracked a law that will go retroactive to
7 prior to when we applied for the service area for the
8 Town of Milton in 2004.

9 And if you had been following it,
10 Councilwoman Hudson, you would know in the last two
11 weeks, it's been in the Salisbury Times, it's been in
12 the News Journal, it's been in the Cape Gazette. I
13 think it may have been in the Delaware State News.
14 There's been numerous, numerous things. This has been a
15 hot item for the State of Delaware and talking about the
16 change in this law is going to destroy Livable Delaware
17 and the State Planning Office.

18 So technically, the public are well
19 informed. As a matter of fact, you will see a letter in
20 front of you from the Delaware League of Local
21 Governments that they sent on June 11th to their
22 legislators.

23 And it says: Dear Honorable Legislator, the
24 Delaware League of Local Governments, which represents

1 57 municipalities in Delaware, is strongly opposed to
2 Senate Bill No. 77. Simply put, Senate Bill No. 77 will
3 derail municipalities' ability to plan for responsible
4 growth and does not able Livable Delaware anti-sprawl
5 plan.

6 The League totally supports Governor
7 Minner's Livable Delaware Bill. It also makes it
8 extremely difficult for towns and municipalities to be
9 fair in equal footing with the private sector if the
10 area of wastewater treatment services.

11 If Senate Bill No. 77 passes, it will
12 encourage home builders to develop land outside of town
13 limits, creating more sprawl and creating more state
14 problems, such as roads, police, fire service, and
15 ambulance service. These services, in most cases, are
16 provided by municipalities.

17 We urge you not to pass Senate Bill No. 77.
18 Thank you for your consideration. Sincerely yours,
19 George C. Wright, Executive Director, Delaware League of
20 Local Governments.

21 So the issue is when we wrote this contract
22 with the Tidewater, we were protecting the citizens of
23 Milton and we were giving them the most -- the first
24 town in the State of Delaware to get what was right for

1 the town, the people of the town.

2 However, our lovely legislators and senators
3 and representatives up in Dover didn't like that. They
4 didn't want us to get the most for the municipalities.
5 There were other special interest groups that obviously
6 had more to benefit. So therefore, they are rewriting
7 the law. So I think with that issue in the amendment,
8 first of all, we have to do it, because the law has been
9 changed or is in the process of being changed; and
10 second of all, I would highly recommend you to, you
11 know, go out and speak out on this issue, because yes,
12 they have cost the municipalities millions of dollars.
13 You are exactly right. So for us, we are amending the
14 contract that is going to meet the law, because it's
15 changing.

16 COUNCILWOMAN HUDSON: Mr. Mayor, Senate Bill
17 77, as my understanding, it will give the farmers and
18 the developers in our growth expansion area the freedom
19 to choose whether they want to go with Tidewater or
20 whether they want to go Artesian or whether they want to
21 just sink their own well, as they do out in Pemberton,
22 which is within your growth expansion area. So even
23 before Senate Bill 77, the County gave away our growth
24 expansion area, as they did in Pemberton, where each

1 home out there has its own well and its own septic tank.

2 But regardless of House Bill 77, giving
3 people the option to go with Tidewater or not, the thing
4 is I don't see any reason why Milton should give away
5 the annexation fees because it says annexed or not
6 annexed. It doesn't say whether it's contiguous or not
7 contiguous. It doesn't say whether they have freedom of
8 choice or they don't have freedom of choice. It says --
9 you said, sir, that it was annexed or not annexed, the
10 Town would receive 1,500 per unit. And now we are not
11 getting -- This amendment does not give us anything
12 outside our boundary.

13 I think this amendment is giving away
14 millions and millions of dollars, regardless of Senate
15 Bill 77. That, to me, is just an excuse that Tidewater
16 is giving it away. I don't see any benefit here for the
17 Town, because in spite of House Bill 77, I believe
18 Milton could still insist on getting 1,500 per new
19 connection for anything that Tidewater signs up in that
20 growth expansion area. And that's why this is millions
21 of dollars that we would have had, according to what was
22 said here previously, this contract, whether it's
23 annexed or not annexed, the Town will receive 1,500.
24 Now it says 1,500 connection fee for service within the

1 Town's boundaries shall remain payable. And that's all
2 we're getting?

3 And it doesn't say -- address anything about
4 the Sam Lucas property, whether that's still excluded or
5 not. So even with -- Okay. Senate Bill 77 passes, and
6 they have freedom of choice. Well, suppose they all
7 choose Tidewater. I mean there's that option. They all
8 could choose Tidewater. But then why are we giving this
9 away?

10 I don't see how this benefits the Town at
11 all. I see that it hurts the Town. We're giving away
12 all the connection fees outside of the Town's
13 boundaries. And so whether or not Senate Bill 77
14 passes -- and I think this is an enormous -- millions of
15 dollars' worth of money to give away without noticing
16 this to the public.

17 MAYOR POST: Since Mr. Dickerson was
18 attending all of those meetings up there, I will have
19 him comment in regards to the \$1,500.

20 MR. DICKERSON: I am currently reviewing the
21 original contract and looking for the verbiage. If I
22 could have just moment to 7:27:27 (unintelligible).

23 MR. BRADY: Mr. Mayor?

24 MAYOR POST: Yes.

1 MR. BRADY: Technically, the issue before
2 the Council is on the agenda, whether or not to amend
3 the agenda or not. The points made by the Councilwoman
4 are valid when we get into discussion after the agenda
5 is amended. But technically, the question that was
6 posed to start with is: Is this a valid meeting and was
7 the agenda valid?

8 With regard to a special meeting pursuant to
9 the charter, there has to either be certified mail sent
10 to each member of Council and those returns available
11 with the Town Clerk to show that there was notice of the
12 special meeting. For purposes of an agenda, an agenda
13 has to be published seven days prior, unless there are
14 items added or subtracted. And they have to be
15 published as soon as practicable, but in the event no
16 later than 12 hours before a meeting.

17 On Thursday night, the agenda that was --
18 Thursday night, the agenda was amended for this meeting
19 tonight. And added to it was the agreement, because the
20 agreement was tabled by Councilman Prettyman's motion
21 and seconded by Councilwoman Betts.

22 At that time on Thursday, I read into the
23 agenda the entire -- I read into the record the entire
24 agreement. And so there was, I believe, technically,

1 according to FOIA, notice of what was going to be
2 considered as the new version had come out that day.
3 And Councilman Prettyman's motion was to table it so the
4 members of Council could view it over the weekend.
5 And it was supposed to be put on the website as of
6 Friday.

7 So my understanding is that with regard to
8 the technical points on amending the agenda and whether
9 or not we have a valid meeting here tonight, I would
10 submit that if the Town Clerk has the returns from the
11 certified mail, then the meeting was called properly, in
12 accordance with the charter, and that the amended agenda
13 that I have a copy of that says it was posted on
14 June 8th at 2:13 p.m., where it was through the Council
15 discussions at the June 7th Special Council Meeting and
16 per the Town Solicitor, may meet the requirements of the
17 Freedom of Information Act. I just don't have a copy of
18 the original agenda for that night to see. You can pass
19 things to a subsequent agenda, and that's what I believe
20 was done from Thursday night.

21 COUNCILWOMAN HUDSON: So Mr. Brady, you are
22 saying that this is a sufficient description in these
23 agendas, where it says Tidewater Resolution Contract Due
24 Diligence Extension, and then the other one says

1 approval Wastewater Services Agreement Amendment? That
2 is a sufficient description?

3 MR. BRADY: What I have is the amended
4 agenda for tonight --

5 COUNCILWOMAN HUDSON: Yes.

6 MR. BRADY: -- that says Approval of
7 Wastewater Services Agreement --

8 COUNCILWOMAN HUDSON: Amendment.

9 MR. BRADY: -- Amendment No. 1.

10 COUNCILWOMAN HUDSON: Right.

11 MR. BRADY: And the original -- and the 7th,
12 which was the agenda from last Thursday, had on there
13 that was amended was -- this was the original agenda.
14 There was an amended agenda --

15 MAYOR POST: That night.

16 MR. BRADY: -- that was issued after the
17 meeting was canceled on the 4th because of a lack of
18 quorum. And that's when the Tidewater was ended. And
19 it was rolled over because members of Council wanted to
20 have more of an opportunity to review the documents, as
21 I recall.

22 MAYOR POST: That's correct.

23 COUNCILWOMAN HUDSON: I understand the
24 reason. You haven't said sort of like yes or no. It

1 says Tidewater Resolution Contract Due Diligence
2 Extension. That was on June 7th. On June 12th it says
3 Approval of Wastewater Services Agreement No. 1. Do you
4 feel that is a sufficient description, considering that
5 there's substantive and substantial changes in this
6 amendment than what was previously in the original
7 contract?

8 MR. BRADY: Yes.

9 COUNCILWOMAN HUDSON: Okay. Thank you.

10 MAYOR POST: Okay. So can we have a motion
11 now to approve the agenda?

12 COUNCILWOMAN ABRAHAM: Motion to approve the
13 agenda as written.

14 COUNCILMAN FREY: Second.

15 MAYOR POST: Okay. We have a motion and a
16 second. All in favor, say aye.

17 COUNCILMAN PRETTYMAN: Aye.

18 COUNCILWOMAN ABRAHAM: Aye.

19 COUNCILMAN FREY: Aye.

20 COUNCILWOMAN HUDSON: Aye.

21 MAYOR POST: Aye. Opposed? Motion carried.

22 Okay. Moving under Old Business, Approval of the
23 Wastewater Service Agreement Amendment No. 1 for
24 Tidewater Utilities. And this amendment will amend the

1 Town of Milton/Tidewater Environmental Services,
2 Incorporated Wastewater Service Agreement. Do we have a
3 motion to approve the amendment?

4 COUNCILWOMAN ABRAHAM: I make a motion to
5 approve the amendment as written for the Town of Milton
6 and Tidewater Environmental Services, Incorporated
7 Wastewater Services Agreement No. 1.

8 MAYOR POST: Okay. And can I have a second
9 to that motion?

10 COUNCILMAN FREY: Second.

11 MAYOR POST: Okay. We have a motion and a
12 second. And now, would you, as our Town Solicitor, like
13 to read into the record the amendment in full, and then
14 we will open it for discussion? We read it into record
15 Monday night, but let's read it into record again.

16 MR. BRADY: Whereas, the Town of Milton
17 (Town) and Tidewater Environmental Services, Inc. (TESI)
18 entered into a Wastewater Service Agreement (Agreement)
19 on or about February 24, 2007; whereas, the agreement
20 provides for a due diligent period of four months,
21 beginning on February 24, 2007, with the agreement
22 becoming fully effective upon satisfactory completion of
23 the due diligence; whereas, the agreement contemplates
24 that TESI will acquire an 18-acre parcel of land and pay

1 the Town the sum of 1.5 million for same.

2 And there is some uncertainty as to whether
3 the Town will acquire the land, so it may be sold to
4 TESI pursuant to the agreement.

5 Whereas, pending legislation, namely Senate
6 Bill 77, casts doubts on the ability of the parties to
7 implement all terms of the agreement.

8 Now, therefore, the Town and TESI, with the
9 intent to be legally bound hereby, agree to amend the
10 amendment as follows: TESI shall apply for a
11 Certificate of Public Convenience and Necessity, CPCN,
12 for wastewater service territory to include the
13 territory within the town boundary as soon as possible.
14 TESI shall subsequently seek to obtain additional CPCNs
15 for territory to be served outside the current town
16 boundary. The town shall cooperate with TESI in
17 obtaining the CPCNs. Further, the Town shall adopt the
18 resolution attached hereto in support of the CPCNs for
19 service within the current town boundary.

20 Number two, if the Town is unable to convey
21 to TESI the 18-acre parcel of land located on Sam Lucas
22 Road by the end of the due diligence period, the
23 property shall be conveyed as soon as possible
24 thereafter. If the Town is unable to acquire the

1 18-acre parcel within -- there is no number in there.

2 MAYOR POST: That's right. We have to
3 establish the days tonight.

4 MR. BRADY: -- days of the agreement, the
5 parties agree to make all possible efforts to find a new
6 location to substitute for the 18-acre party --

7 MAYOR POST: Parcel.

8 MR. BRADY: -- parcel. If TESI does not
9 acquire the 18-acre parcel of land from the Town, it
10 shall receive a credit of 1.5 million towards the 3.9
11 million sum owed as the remaining balance under the
12 agreement.

13 In the event that Senate Bill 77, as amended
14 by Senate Amendment No. 2 is enacted into law, the
15 parties agree that TESI may not be the sole provider of
16 wastewater services for the growth area as provided for
17 in Section C(1) of the agreement. And TESI shall not
18 pay to the Town the 1.5 -- \$1,500 fee for the new
19 customer connections in the growth area under paragraph
20 number 14 of the agreement. The \$1,500 connection fee
21 for service within the town boundary shall remain
22 payable in accordance with this agreement.

23 Number four, the due diligence requirements
24 set forth on page 14 of the agreement are deemed -- are

1 hereby deemed satisfied. All other provisions of this
2 agreement shall remain in full force and effect. The
3 effective date of this Amendment No. 1 to the agreement
4 shall be the date on which the amendment has been signed
5 by both parties.

6 And it has a signature line for the Town of
7 Milton and for Tidewater Environmental Services,
8 Incorporated.

9 MAYOR POST: And now that it's opened up
10 for discussion, I would, before we get -- We are
11 discussing the \$1,500 as far as the hook-up fees, and I
12 would like to have it so Councilwoman Melson can have
13 her question --

14 COUNCILWOMAN ABRAHAM: Abraham.

15 MAYOR POST: -- answered by the Town
16 Manager.

17 MR. DICKERSON: I believe that was
18 Councilwoman Hudson's question with regard to the 1,500.

19 COUNCILWOMAN HUDSON: Thank you.

20 MR. DICKERSON: I am reviewing, and I have
21 in my hand -- I would like to state what the document
22 is. It's the Tidewater Environmental Services, Inc.,
23 Wastewater Service Agreement that was signed by the Town
24 on February 24, 2007.

1 Based on what I believe Councilwoman
2 Hudson's issue is is that -- first I need to reassure
3 that that is your position, is that the \$1,500 is not
4 going to be paid to anything outside the town
5 boundaries.

6 COUNCILWOMAN HUDSON: That's TESI's
7 position, sir.

8 MR. DICKERSON: Well, that's what I'm --
9 that's what I'm saying.

10 COUNCILWOMAN HUDSON: It says the --

11 MR. DICKERSON: Is that in the contract?
12 Are you reading from the contract?

13 COUNCILWOMAN HUDSON: According from the
14 Amendment No. 1, 1,500 connection fee for service within
15 the Town's boundary shall remain payable in accordance
16 with the agreement. It says here: TESI shall not pay
17 to the Town the 1,500 fee for new customer connections
18 in the growth area.

19 MR. DICKERSON: That's correct. And there
20 are two issues that come into play here. First was the
21 hearing before the Public Service Commission, probably
22 six weeks ago or so. At that particular time, the issue
23 came up with -- First of all, in October of 2004, the
24 law required that the Town of Milton submit to the

1 Public Service Commission that their growth area or
2 existing service area as they identified it to be by the
3 law. It didn't really require anything other than a
4 map.

5 What Milton submitted was a Comprehensive
6 Plan, the same drawing of our growth area, which was in
7 this case specifically the Workman Farm and what Dan
8 Lockwood's project was with Elizabethtown, which was on
9 the north side of 16, running along 30.

10 The Town at that time submitted and was
11 accepted in September of '04 by the Public Service
12 Commission that identical comprehensive -- that shows in
13 our Comprehensive Plan. They accepted it as our growth,
14 as did many other municipalities and the Town -- and
15 other Town's do a similar -- a like, similar thing.

16 Going in negotiations with a contract, it
17 was thought best if it was our existing service
18 territory, then we should ask for something for those
19 services that if we were to provide them, that --
20 obviously, there was considerable income that the Town
21 could get from them.

22 That has all changed as a result of that
23 Public Service Commission hearing and then the piece of
24 legislation that was introduced in the Senate and was

7 But to get more specifically, I have the
8 contract and the reading of the contract. I do not
9 interpret it -- and obviously, our legal counsel is
10 here -- as you have stated your position to be. So let
11 me read from the actual contract.

14 MR. DICKERSON: I'm getting ready to tell
15 you.

17 MR. DICKERSON: Well, the position that I
18 think, to answer your question before I respond, is that
19 the \$1,500 per connection outside of the town's --

21 MR. DICKERSON: -- boundaries, as they are
22 existing now --

24 MR. DICKERSON: -- we would not get. Is

1 that what you said?

2 COUNCILWOMAN HUDSON: Sir, the Mayor said in
3 the February 24th --

4 MR. DICKERSON: No, what he said --

5 COUNCILWOMAN HUDSON: -- what I said was
6 what I quoted from Mr. Post, Mayor Post. This contract,
7 whether it's annexed or not annexed -- and that has
8 nothing to do with House Bill -- Senate Bill 77.

9 MAYOR POST: It does.

10 MR. DICKERSON: It absolutely does.

11 MAYOR POST: It absolutely does.

12 COUNCILWOMAN HUDSON: When somebody annexes
13 to us, they may agree to -- they may request to annex;
14 they may request not to annex.

15 MR. DICKERSON: That's correct. And in that
16 case, we would get the \$1,500 by the contract.

17 COUNCILWOMAN HUDSON: And that's an
18 agreement between us and a private company. The private
19 company makes an agreement with us, what they are going
20 to pay --

21 MR. DICKERSON: Your point was we were going
22 to lose millions of dollars.

23 COUNCILWOMAN HUDSON: Yes.

24 MR. DICKERSON: Tell me, tell me how. Since

1 the law has been changed, how could we not -- How can we
2 help but lose?

3 COUNCILWOMAN HUDSON: Just for example, if
4 the land behind Wagamon's West Shores, which is owned by
5 Harry Bonk, my understanding, according to what Mr. Post
6 said, suppose they decide not to annex but they go with
7 Tidewater.

8 MR. DICKERSON: Uh-huh.

9 COUNCILWOMAN HUDSON: And so according to
10 the way this is said, whether it's annexed or not
11 annexed, the Town would receive \$1,500 per unit. That
12 leads me to believe that if Harry Bonk, right behind
13 Wagamon's West Shores, had decided to go to Tidewater,
14 then Tidewater would have given us 1,500 per unit. So
15 is --

16 MR. DICKERSON: That is incorrect.

17 COUNCILWOMAN HUDSON: Okay.

18 MR. DICKERSON: And I'm going to read from
19 the contract.

20 COUNCILWOMAN HUDSON: So did they --

21 MR. DICKERSON: Well, are you quoting a
22 statement that the Mayor said, or are you reading from
23 the contract?

24 COUNCILWOMAN HUDSON: I'm quoting a

1 statement the Mayor said.

2 MR. DICKERSON: Okay. I'm going to read
3 from the contract.

4 COUNCILWOMAN HUDSON: Okay.

5 MR. DICKERSON: Okay.

6 COUNCILWOMAN HUDSON: So did -- so this --
7 Am I misinterpreting what he said, or did he
8 misinterpret the contract?

9 MR. DICKERSON: I don't know what he said.
10 You're the one quoting him. I'm only telling you what
11 the contract said. And you're statement was with regard
12 to the Town losing something as a result of the way you
13 thought the contract -- I'm only speaking to the
14 contract.

15 COUNCILWOMAN HUDSON: Okay. So -- All
16 right. Go ahead and read the contract.

17 MR. DICKERSON: All right. I'm just going
18 to read the relevant sections, talking about the
19 \$1,500 --

20 COUNCILWOMAN HUDSON: Okay.

21 MR. DICKERSON: -- and what is a trickling
22 mechanism in the agreement that does that.

23 COUNCILWOMAN HUDSON: Okay.

24 MR. DICKERSON: It's in -- It's on page five

1 of the contract. I'll read that. And it's the last
2 paragraph on that page. It says: TESI will pay to the
3 Town a \$1,500 fee per new construction after the date of
4 signing of this agreement.

5 COUNCILWOMAN HUDSON: Not per construction?

6 MR. DICKERSON: I think -- I'm just --

7 COUNCILWOMAN HUDSON: It's not -- does it
8 say --

9 MR. DICKERSON: What's your question?

10 COUNCILWOMAN HUDSON: Does it say new
11 construction?

12 MR. DICKERSON: Yes.

13 MAYOR POST: New connection.

14 COUNCILWOMAN ABRAHAM: New connection.

15 COUNCILWOMAN HUDSON: New connection.

16 MR. DICKERSON: Per new connection, yes.

17 COUNCILWOMAN HUDSON: Thank you, George.

18 MR. DICKERSON: Yes. Okay. After that date
19 of the signing of this agreement, in parentheses,
20 excluded from this new annexation requirement is the Sam
21 Lucas property, which is identified in section 14. So
22 that talks about \$1,500 of annexed property coming in,
23 but it exempts the Sam Lucas Road property, the 20 acres
24 that's coming in.

1 COUNCILWOMAN HUDSON: So it talks about new
2 annexation.

3 MR. DICKERSON: New connection and new
4 annexation, yes.

5 COUNCILWOMAN HUDSON: New annexation.

6 MR. DICKERSON: Now, if you go to section
7 14, which is the payable section of the contract, what
8 must be paid --

9 MAYOR POST: What page is that?

10 MR. DICKERSON: That is on page 12, on page
11 12 of the contract. And it is -- it starts out in that
12 Section B, the 6.4 million will be paid out by TESI as
13 follows: And then it talks about conditions. I'm
14 sorry?

15 COUNCILWOMAN ABRAHAM: These are numbered
16 wrong. But go ahead.

17 MR. DICKERSON: Okay. This is the one that
18 is on record as signed, so I'm not sure why.

19 COUNCILWOMAN ABRAHAM: Okay. We found what
20 you're talking about.

21 MAYOR POST: All right. Page 12.

22 MR. DICKERSON: Okay. It states: TESI
23 agrees to pay a \$1,500 total and no other new customer
24 fee for any new annexed property --

1 COUNCILWOMAN HUDSON: Or.

2 MR. DICKERSON: -- or property identified by
3 the Public Service Commission, PSC, as the Town of
4 Milton service area after the date of the signing of
5 this agreement. As it stands, the Public Service
6 Commission has not rendered a final order. They have,
7 however, issued a draft order, and that draft order goes
8 against us servicing that area.

9 So there's nothing in violation of the
10 1,500, as you have spoken to with regard to the
11 contract. But certainly, Mr. Brady could comment to
12 that.

13 MAYOR POST: But the amendment is reflecting
14 the decision Public Service Commission and Senate Bill
15 77.

16 MR. DICKERSON: Absolutely. In fact --

17 MAYOR POST: And I also want to go on record
18 to the fact that the Public Service Commission, their
19 ruling officer, which is their legal representation,
20 recommended to their commission, the Public Service
21 Commission, to rule in Milton's favor. They went
22 against that and ruled against us.

23 So there's some strong politics being played
24 in Dover. So they're the ones you can thank for costing

1 this Town --

2 MR. DICKERSON: So that --

3 MAYOR POST: -- as well as other
4 municipalities across the state millions of dollars.

5 MR. DICKERSON: If I may say, as a result of
6 the 15, the loss of millions of -- as for the \$1,500 for
7 new, yes, we wanted that very much. If this piece of
8 legislation passes, it's gone for everyone; not just
9 Milton, for all municipalities.

10 COUNCILWOMAN HUDSON: But George, getting
11 back to the amendment, though, TESI will not pay to the
12 Town 1,500 for new connection, new customer connections
13 in the growth area, 1,500 connection fees for service
14 within the town boundaries will remain payable.

15 My question is: What if someone wishes to
16 annex in, according to what this amendment says --

17 MAYOR POST: They'll sign it.

18 MR. DICKERSON: No. They have to pay it.
19 They have to pay the 1,500 for it.

20 COUNCILWOMAN HUDSON: Could that be --

21 MR. DICKERSON: And that's on annexed
22 property, yes.

23 COUNCILWOMAN HUDSON: Could that please be
24 spelled out so that it's there?

1 COUNCILMAN FREY: It is.

2 MR. DICKERSON: It is.

3 COUNCILMAN FREY: It is spelled out.

4 MR. DICKERSON: That's what it says.

5 MAYOR POST: It says the \$1,500 connection
6 fees for service within the town's boundary --

7 COUNCILWOMAN HUDSON: Within the town's
8 boundary.

9 MAYOR POST: -- which means when something
10 is annexed in and is in the town's boundary --

11 COUNCILMAN FREY: The town's boundary --

12 MAYOR POST: -- shall remain payable in
13 accordance with this agreement. So what they're saying
14 is they are going to honor that \$1,500 on anything
15 that's in the town's boundaries. So once anything is
16 annexed in, that is town boundary.

17 The problem now is is we were able to
18 negotiate a deal for them outside of our annex -- if it
19 wasn't going to be annexed in, as long as it was in our
20 growth area --

21 MR. DICKERSON: Service area.

22 MAYOR POST: -- or service area, which is
23 really the same. I get tired of hearing it. But the
24 service area and the growth area, I know they are

1 defined as two different things. But technically, they
2 are really the same thing as far as the geographic
3 dimensions of that space.

4 But what has happened in House Bill -- or
5 Senate Bill 77 and the great Public Service Commission
6 in Dover, they have stripped us of this. And that is
7 why all -- everybody -- if you had read last week in
8 Cape Gazette front page, Lewes has come out against it.
9 Georgetown has come out against Senate Bill 77.

10 This is very detrimental. And it also -- it
11 just totally destroys Livable Delaware, and it destroys
12 the planning office. And this has created some -- As a
13 matter of fact, at the last hearing in the House or
14 whatever committee that was in -- which committee did
15 you just go to that meeting?

16 MR. DICKERSON: It was in the House.

17 MAYOR POST: The House, Connie Holland
18 testified on the behalf of not supporting Senate Bill
19 77. And Connie Holland is appointed by the governor and
20 runs the State Planning Office. She is against this.
21 There are numerous people against this.

22 But thanks to what has happened, we can now
23 not legally bind Tidewater to what we had originally had
24 in the contract. And it's sad for me, too. That's why

1 we negotiated the best deal. As a matter of fact, we
2 couldn't negotiate with Preswick, because Preswick
3 didn't -- that was like three or four years ago -- did
4 not want to come into the town, because remember Eric
5 Evans going to the County protesting it on behalf of the
6 town that the County should force them to come into
7 Milton -- or Pemberton, not Preswick, Pemberton.
8 There's a Preswick, too, isn't there?

9 COUNCILMAN FREY: Pemberton.

10 MAYOR POST: Pemberton.

11 COUNCILWOMAN HUDSON: Again, it's still the
12 question about the Sam Lucas property, because it says
13 on page five: Excluded from this new annexation
14 requirement -- and again, the words new annexation are
15 not in the amendment. Is the Sam Lucas property still
16 excluded? When you say we may not get the 20 acres or
17 it may be R-1 --

18 MAYOR POST: It's simply excluded, because
19 it's in the original formula of the 1,000 -- is that not
20 correct? Number four, because -- Clarify that for her.
21 What page is that on in the contract again?

22 COUNCILWOMAN HUDSON: It's page five in the
23 original contract.

24 MAYOR POST: Page five does state TESI will

1 pay to the Town a \$1,500 fee per new connection after
2 the date of signing this agreement. In parentheses, it
3 says excluded from this new annexation requirement is
4 the Sam Lucas Road property, which is identified in
5 section 14.

6 But is that not the reason for that? It's
7 been so long now that we've going around with this. Is
8 that -- wasn't that because Sam Lucas, those properties
9 were in that formula of the one -- that's what I
10 thought, in the 1,000. So they are not excluding them,
11 but they are already in that other formula that --

12 COUNCILWOMAN HUDSON: They're not going to
13 pass the new connection fees because, again, in your
14 letter to the Cape Gazette, you mentioned that when you
15 subtracted the annexation fees from the money we were
16 going to get for the 1.5 million, you also subtracted
17 the waived new connection fees for the Sam Lucas
18 property.

19 So I would like to make sure that in the
20 amendment it clearly states that TESI will pay us the
21 1,500 per new connection fee for the Sam Lucas property
22 if we don't get the 20 acres. I would like that
23 clarified so that we make sure that we get that money.
24 That's almost \$600,000.

1 MAYOR POST: 600,000?

2 COUNCILWOMAN HUDSON: Well, if you go with
3 the -- it said --

4 MR. DICKERSON: Well --

5 COUNCILWOMAN HUDSON: The contract said no
6 less than 290 homes times 1,500, that's close to
7 600,000.

8 MAYOR POST: At 350.

9 COUNCILWOMAN HUDSON: If it stays at R-1, of
10 course, 1,500 times 200 homes is only 300,000. But
11 still, I would not like the Town to lose out on even
12 300,000. So I would like to make sure that that few
13 little words there, just to make sure that Sam Lucas
14 property -- we are -- we will be getting the 1,500 per
15 new connection for the Sam Lucas property.

16 MAYOR POST: We won't, because we've
17 already -- First of all, we've already voted on the
18 agreement that excludes that on page five of the \$1,500.

19 COUNCILWOMAN HUDSON: But we have an
20 amendment that changed the agreement.

21 MAYOR POST: Right.

22 COUNCILWOMAN HUDSON: So I would like to
23 make sure that in the agreement, which is what we are
24 discussing tonight, that the -- that we get the new

1 connection fees for the Sam Lucas property.

2 MAYOR POST: But 1,500 is in the calculation
3 of the 1,000 -- or 1,100 -- whatever the connection --
4 of existing homes that will immediately go on.

5 MR. DICKERSON: As Jerry Esposito spoke, he
6 talked about a threshold number that you needed to make
7 that work. Mayor, I'm just not sure what you referred
8 to when you talked about that. I mean I just 7:52:52
9 (unintelligible).

10 MAYOR POST: But there was a reason that
11 that was excluded --

12 MR. DICKERSON: Yes.

13 MAYOR POST: -- because it was put into
14 another -- the other area of the contract in the total
15 number of calculated homes.

16 COUNCILWOMAN HUDSON: But --

17 MR. DICKERSON: The only thing excluded that
18 I know of is 7:53:07 (unintelligible) two of them now,
19 the 20 acres, you have two acres --

20 MAYOR POST: Right.

21 7:53:16 MR. DICKERSON: (Unintelligible) 18
22 from 1.5 million. And at one time they were down to
23 7:53:19 (unintelligible) dollars. I do know that. That
24 --

1 MAYOR POST: And you're exactly right. The
2 committee came back wanting us to pay three million.
3 Now we're getting --

4 MR. DICKERSON: So --

5 MAYOR POST: Still under a million.

6 MR. DICKERSON: 7:53:31 (unintelligible)
7 came to the Town on the Sam Lucas property is a
8 considerable sum, just as an aside. But it doesn't mean
9 that this -- the Public Service Commission rule -- this
10 was in draft form now that I received. And the Senate
11 Bill 77, you are not going to be allowed to service or
12 collect any \$1,500 through connection fees outside of
13 the town.

14 COUNCILWOMAN HUDSON: Sam Lucas is no longer
15 outside our town. It's been annexed in.

16 MR. DICKERSON: I don't disagree with you.

17 COUNCILWOMAN HUDSON: Hmm?

18 MR. DICKERSON: I don't disagree with you.

19 COUNCILWOMAN HUDSON: Right. But the clause
20 still states -- it says that it was excluded. And now
21 that it's annexed in, I would like to make sure that
22 that clause is taken out, because in the copy I have of
23 the letter that the Mayor wrote to the Cape Gazette, he
24 started with the sum of 1.8 million and then subtracted

1 from it the annexation fees that we would not be getting
2 on the 66.5 acres. He subtracted 532,640. And then he
3 subtracted 594,000, the Tidewater new connection fees
4 the Town will not realize, from 396 units in the Key
5 Ventures parcels. And so that is a loss --

6 MAYOR POST: The only thing we're talking --

7 COUNCILWOMAN HUDSON: -- unless we can put
8 it -- make sure it's in the agreement that we get that.

9 MAYOR POST: That was --

10 MR. DICKERSON: Quoting from a newspaper
11 article -- and they're not reliable --

12 COUNCILWOMAN HUDSON: No.

13 MAYOR POST: And I've got to look at that
14 again. The thing is is the only thing that we --

15 COUNCILWOMAN HUDSON: It's the original.

16 MAYOR POST: -- are referring to with the
17 newspaper article that I'm aware of was the five -- and
18 I have to rethink of that when I wrote that. But the
19 thing is is that it was 8,000 per acre, which was the
20 annexation impact fee that that contract was used in
21 regards for the payment of Sam Lucas.

22 The bottom line, 500-some thousand is what
23 it would have cost the Town of Milton, selling it at 1.5
24 million. We were going to pay three million, how it was

1 negotiated before. Figure out which one is in the
2 positive and which one is the negative.

3 COUNCILWOMAN HUDSON: Well, speaking with
4 the amendment, sir, I do not want to give anything away
5 to a private business --

6 MAYOR POST: And we had not. I can assure
7 you --

8 COUNCILWOMAN HUDSON: -- for this town.

9 MAYOR POST: -- Councilwoman Hudson --

10 COUNCILWOMAN HUDSON: I would just like to
11 make sure that we get the -- whether it's 1,500 for 200
12 homes in R-1 or it's 1,500 for 390 homes --

13 MAYOR POST: I'm telling you that the homes
14 are --

15 COUNCILWOMAN HUDSON: -- zoned R-1, I would
16 like to make sure that the Town gets the money that
17 Tidewater says it's going to give it and make sure that
18 clause is deleted from the original contract or else
19 make sure it's plainly written in this amendment.

20 MAYOR POST: Well, that will have to be in
21 another amendment, because this is a different
22 amendment --

23 MR. DICKERSON: I think 7:56:27
24 (unintelligible).

1 MAYOR POST: Right.

2 MR. DICKERSON: Mr. Brady, on page 12, do
3 you have the agreement in front of you, sir?

4 MAYOR POST: You're talking about the
5 original, right here.

6 MR. DICKERSON: The original.

7 MAYOR POST: The signed, right here.

8 MR. DICKERSON: On page 12, the --

9 COUNCILWOMAN ABRAHAM: It's not numbered
10 right, though.

11 MR. DICKERSON: -- sentence there, the last
12 sentence in the paragraph where it starts 7:56:44
13 (unintelligible), TESI agrees to pay a \$1,500 total and
14 no other new customer fee for any new annexed property.
15 So Sam Lucas is a new annex. They're going to pay a
16 \$1,500 fee.

17 COUNCILWOMAN HUDSON: Okay.

18 MR. DICKERSON: 7:57:02 (unintelligible).

19 COUNCILWOMAN HUDSON: Okay. Well, page
20 five, remember it says --

21 MAYOR POST: No, paragraph four.

22 COUNCILWOMAN HUDSON: Excluded from this new
23 annexation requirement is the Sam Lucas Road property.
24 And I would -- that's page five.

1 MAYOR POST: Page five, at the bottom.

2 COUNCILWOMAN HUDSON: Yes. So I would like
3 to make sure our new agreement --

4 MAYOR POST: But I'm trying to tell you, Sam
5 Lucas is in that calculation of the 1,100-some homes or
6 the --

7 COUNCILWOMAN HUDSON: No, it's not.

8 MR. DICKERSON: I don't know what you think
9 it says. I'm not going to go there.

10 MAYOR POST: Yes. All right. Well, that
11 will be the need then for another amendment. I'm sure
12 there will be --

13 COUNCILWOMAN HUDSON: And I have it here,
14 sir. It says Bruce Patrick, Vice President of
15 Engineering, the 1,500 is sort of a mixed bag out of the
16 ones that are allocated with EDU agreements, 80 or 90
17 fully paid, 350 or so partially paid.

18 So it says nothing about Sam Lucas being
19 part of that 1,500. This was Bruce Patrick identifying
20 what the 1,500 are. But he did not say that Sam Lucas
21 was part of that especially -- what I'm referring to is
22 Tidewater doesn't want to pay us 1,500 per connection
23 for the Sam Lucas property. And I would like to make
24 sure that the Town gets the money for that.

1 And I'm quoting from the minutes of the
2 February 24th, where there was considerable discussion
3 about this 1,500. Mr. Esposito said that we needed
4 1,500 to pull -- he said he needed 1,500 to pull the
5 trigger.

6 MR. DICKERSON: That's not \$1,500. That's
7 homes.

8 COUNCILWOMAN HUDSON: 1,500 homes. We're
9 talking 1,500 homes, and the Sam Lucas property was not
10 identified as part of that 1,500 that I see on here.
11 But still, the point is: Are we getting paid for that?
12 Whether it's included in the homes he needs to start
13 shoveling dirt for a new plant is one thing. But I want
14 to make sure we get paid for those connections.

15 So even if it's part of the 1,500 that you
16 need to start shoveling dirt on a new power plant,
17 that's a whole separate issue.

18 MAYOR POST: Our attorney has --

19 MR. DICKERSON: Okay.

20 MAYOR POST: Our attorney has the answer.

21 COUNCILWOMAN HUDSON: Okay. Tell me we're
22 going to get paid for those, will you, please?

23 COUNCILWOMAN ABRAHAM: I wish we were.

24 MR. BRADY: We need to fill in numbering in

1 paragraph number two. So the Council has to come up
2 with the number in paragraph number two.

3 COUNCILWOMAN HUDSON: Oh.

4 MR. BRADY: If the Council wishes to propose
5 additional language, because you feel this is not clear,
6 I can respond back to Tidewater with the additional
7 language. When construing a contract, you construe it
8 against the person who has drafted it. This draft came
9 from Tidewater.

10 So if it is not clear -- and I'm reading
11 five words I may suggest in paragraph number three,
12 where it says after the \$1,500 connection fee for
13 services within the town boundary includes all property
14 annexed into the town, shall remain payable in
15 accordance with this agreement, that, I believe,
16 clarifies and deals with Councilwoman Hudson's first
17 point about that all annexed property needs to be
18 subject to this agreement.

19 With regard to language that I may suggest
20 after the discussion I've heard tonight and
21 understanding the concerns that the Council members have
22 raised, that it could be that if TESI does not acquire
23 the 18-parcel acre from the Town, the credit can go
24 there, but that 18 acres shall be subject to annexation

1 connection fees as described in section three.

2 COUNCILWOMAN HUDSON: Yes. Add that in.

3 MR. BRADY: And I believe that although I
4 think I could make an argument that that is what that
5 means, I understand the clarity that the Councilwoman is
6 proposing in order to make it crystal clear on the
7 document so there's ambiguity.

8 COUNCILWOMAN HUDSON: That's it.

9 MR. BRADY: If it is clear on the document,
10 the Court will look right at the document. If it's not
11 clear from the document, the Court would look at the
12 tapes of the discussions and the -- you don't want to
13 get to parole evidence or other items if it can be clear
14 from the face of the document.

15 So I understand the concerns. And
16 basically, when I reviewed this, when it was sent to me
17 on Thursday, I did not have the benefit of the comments
18 tonight, and I could see how it could be read one way.
19 And after the comments made tonight, I can see how
20 someone could interpret it differently.

21 COUNCILWOMAN HUDSON: Thank you. I would
22 just like to have as much clarity on this amendment as
23 possible. And please make it perfectly clear that we
24 would like to be paid connection fees for the Sam Lucas

1 property if, in fact, we do not acquire the 18 acres for
2 land.

3 MR. BRADY: Right.

4 COUNCILWOMAN HUDSON: Thank you.

5 MR. BRADY: So since they knew we were going
6 to have to put a number in here, that let me go back
7 with them as this is what they're willing to -- Council
8 is willing to approve. If Tidewater has a problem with
9 it, then I would suggest that it be added back on to the
10 agenda for the July 2nd meeting.

11 COUNCILWOMAN HUDSON: Oh, I have a question
12 about number two in the amendment. It says: If the
13 Town is unable to acquire the 18-acre parcel within so
14 many days of this amendment, the parties agree to make
15 all possible efforts to find a new location to
16 substitute for the 18-acre parcel.

17 I oppose the word parties, because again, I
18 don't -- not again, but I oppose the word parties,
19 meaning the Town having any responsibility for finding
20 land for a private business to operate.

21 And it says -- Mr. Esposito said our --
22 First, Mayor Post said in this February 24th special
23 meeting -- Mayor Post said: I would assume Tidewater --
24 if we don't get the 18 acres, I would assume Tidewater

1 would then have to purchase land elsewhere, and then we
2 would remove the amount allocated from the contract.

3 Mr. Esposito responded: What the Mayor said
4 is true. There's a clause in there that was probably
5 not clearly highlighted when you went through it that
6 says, quote, if there is no 18 acres, the terms will
7 have to change, end quote. But in the meantime, we
8 budgeted for the amount to buy the land. We believe
9 that with that kind of money, we could get land
10 elsewhere to buy another kind of facility nearby, so we
11 were not worried about that.

12 So since Mr. Esposito has said on that
13 occasion and on at least once, if not on several
14 times -- at least once, anyway; I've got it there --
15 that they will be responsible for buying the land. They
16 have -- back in February, they knew there was a chance
17 that they might not get the 18 acres. They had prepared
18 for that contingency. They had budgeted for that. They
19 were ready to go ahead and find land elsewhere.

20 I do not believe that in the amendment we
21 need to put ourselves in a position of assuming any of
22 that responsibility. When I pay for service to Delmarva
23 Power, I don't go out looking for land for a power
24 plant. And when I put my trash can out there and we

1 applied for an agreement to have our trash picked up, we
2 did not assume any responsibility for finding the land
3 to dump our garbage.

4 And I do not think that this Town should
5 assume any responsibility to find any land, when both
6 the Town and the Tidewater knew ahead of time, way back
7 in February, that there was a chance that they may not
8 get that 18 acres. Now, all of a sudden, Tidewater
9 wants to make us responsible for helping them find that
10 land.

11 And I think that word parties should be
12 changed and just say strictly --

13 MAYOR POST: I don't agree so 8:05:53
14 (unintelligible).

15 COUNCILWOMAN HUDSON: -- Tidewater agrees to
16 make all possible efforts to find a new location for the
17 substitute for the 18 acres.

18 MAYOR POST: I don't --

19 COUNCILWOMAN HUDSON: Because I do not think
20 that Milton should have any part and any responsibility
21 of finding the land.

22 MAYOR POST: All right. Well, Councilwoman
23 Hudson, I disagree with you on that. You know, what is
24 very interesting is this Town has floundered for five

1 years purposely to not resolve this issue with the sewer
2 plant. And as you can see how the plant has been
3 structured over the four or five years for everything to
4 play right, just like a jigsaw puzzle. And now that it
5 didn't, that jigsaw puzzle, that last piece didn't fit.
6 And now that we have resolved an issue and we certainly
7 have taken -- and that's the whole purpose of the
8 possibility of the 18 acres. It's a whole political
9 internal issue of a failed plan that didn't happen that
10 was started four years ago in the Town of Milton.

11 And you know what? It is our responsibility
12 to establish this sewer plant. It is, because you know
13 what? I have taken kind of the -- another approach,
14 too, because quite frankly, I could care less, because
15 my toilet flushes. And you know, it doesn't matter to
16 me whether we have a sewer plant or not. It doesn't
17 matter to me if we annex another parcel into this town
18 ever in the Town of Milton.

19 But you know what? We do have obligations
20 out there. We have committed to developers in numerous
21 locations. We have -- Whether you like it or not, we've
22 committed it. That was another plan for the four-year
23 plan, structured plan, by previous players in the Town
24 of Milton to pre-sell EDUs that didn't really exist to

1 put another weakness onto the current sewer plant.

2 So you know, Tidewater does have some
3 options. They're taking over. They've taken over --
4 they're taking over the plant. They can do some
5 renovations to the plant and we can wait six, seven
6 years until we find the land. It doesn't matter anymore
7 to me one way or the other.

8 We have provided our -- I have searched
9 over -- Councilwoman Betts and myself -- and one
10 councilperson that's no longer sitting up here that had
11 an excuse for five years couldn't find a parcel of land,
12 we find a parcel of land that we're going to make money
13 on. It's still an issue, still an issue for some
14 people. Yes, still just doesn't -- that puzzle piece
15 doesn't fit yet.

16 And you know, I remember going to numerous
17 farmers out, just recently, in the last year and a half.
18 We could have bought land, 150,000 an acre, could have
19 bought it at 125,000 an acre. It was pretty tough to
20 find anything at 100,000 an acre. Now we have something
21 we're not buying, we're not paying anything for. I'm
22 like we're making money on it. What a bad deal.

23 So you know, people can sit up here, come up
24 with every excuse in the book. But I'm telling you

1 right now, there's a golden opportunity. You can seize
2 it. You can walk away from it, because the bottom line
3 is my toilet flushes. Nothing is going to change.
4 Tidewater is taking over the plant. It's happened. And
5 we can either cooperate and try to speed this along,
6 whether the 18 acres fails or not. Or if it happens,
7 that's great. If it doesn't, we'll find something. But
8 you know what? I feel we're in this together with
9 Tidewater. And I have no problem committing to being a
10 partner and working this deal through. And I do think
11 it's our responsibility as a government.

12 COUNCILWOMAN HUDSON: Sir, when the Town was
13 originally looking for land, it was to buy land for a
14 municipal plant that the Town would own. When the Town
15 voted to privatize, then the Town no longer owns the
16 service and no longer owns -- has the obligation. It's
17 now on this private company, which is making a profit.
18 And it's their responsibility. We pay them for the
19 service. We pay them to provide the labor. We pay them
20 to have the experts and to do the job, to go out and
21 find it.

22 We no longer have to find land for
23 ourselves, because we no longer have a municipal plant.
24 We signed the contract. We voted to privatize. And you

1 know, Mr. Esposito -- I don't see the reason, again,
2 to -- according to this amendment, to put ourselves
3 under an obligation that we don't need to, when
4 Mr. Esposito assured us that we did not need to put
5 ourselves under this obligation, because he's said we
6 budgeted for the amount to buy land.

7 We believe with that kind of money, we can
8 get land elsewhere to build another kind of treatment
9 plant nearby. We are not worried about it. So I do not
10 see a reason for us to obligate ourselves to help a
11 private company that is making a profit, where we lost
12 money. They will be making a profit. And this is an
13 unnecessary obligation, after Mr. Esposito assured us we
14 did not need to have this obligation. And that is not
15 to our advantage. I don't see any advantage or any way
16 that this helps Milton at all. Rather, it puts an
17 unnecessary obligation on us that we do not need to
18 have.

19 MAYOR POST: So we can agree to disagree.

20 COUNCILWOMAN ABRAHAM: That is true.

21 COUNCILWOMAN HUDSON: So I think the word
22 parties should be deleted and the word --

23 COUNCILWOMAN ABRAHAM: I don't.

24 COUNCILWOMAN HUDSON: -- TESI should just

1 be --

2 MAYOR POST: I don't.

3 COUNCILWOMAN ABRAHAM: I don't.

4 COUNCILWOMAN HUDSON: -- added in there.

5 TESI agrees to make all possible efforts, because that's
6 what Mr. Esposito assured us he was going to do. So
7 there is absolutely no reason for us to obligate
8 ourselves to help him make a profit off of us when he
9 has assured us that we has already taken care of that
10 contingency.

11 MAYOR POST: Well, we certainly --

12 COUNCILWOMAN HUDSON: We planned ahead.

13 MAYOR POST: We certainly spent four hours
14 or four years --

15 COUNCILWOMAN ABRAHAM: Can we go on the --

16 MAYOR POST: -- negotiating with North
17 Milton, which was really privatizing, so --

18 COUNCILWOMAN ABRAHAM: And they wanted to
19 make a profit on it themselves and the Town --

20 MAYOR POST: And they wanted to make a
21 profit, so --

22 COUNCILWOMAN ABRAHAM: -- was out.

23 MAYOR POST: You know, I've been there, done
24 that.

1 COUNCILWOMAN HUDSON: North Milton is not on
2 this amendment, sir. It's TESI.

3 MAYOR POST: No, you are right. But it was
4 certainly part of the plan, wasn't it?

5 COUNCILWOMAN HUDSON: Right now I'm
6 interested in what Tidewater is going to do with Milton
7 and how we can get the best agreement we can --

8 MAYOR POST: And I agree with you. And it's
9 how to build a strong sewer plant --

10 COUNCILWOMAN HUDSON: -- with this
11 amendment.

12 MAYOR POST: -- and service the people and
13 service the people that haven't come on line. And I'm
14 willing to, as a government, to take that
15 responsibility. We are not talking about dollar costs.
16 We're talking about cooperation, collaboration, working
17 together. And I'm willing to do that. So we can agree
18 to disagree on number two.

19 But we will need to agree on days, the
20 number of days. And while we're on number two, we might
21 as well figure the time that we want to extend for the
22 acquiring of the 18 acres. And I certainly think
23 90 days would be a reasonable amount of time.

24 COUNCILWOMAN ABRAHAM: I agree, Mr. Mayor.

1 MAYOR POST: And when you review this,
2 one, number one and number three, there's only three
3 parts of this amendment. Four is just standard stuff
4 about everything else will be, you know, hereby deemed
5 satisfied by the page 14 of the amendment. So there's
6 only two -- three amendments that I know you were
7 talking about that were of such grave concerns to the
8 public. And two of those are dictated by law, the new
9 law in the State of Delaware.

10 Number two is only the real issue. And you
11 certainly could not expect someone, when you negotiated
12 a deal, to sell them the land that if the land deal
13 falls through, that they still have to pay us for the
14 land. And that is what number two is all about, is that
15 they no longer will be obligated to the 1.5 million of
16 the total in that section in the contract, where when
17 they give a tally of the total due to the Town of
18 Milton. So they're just saying now that you can see
19 such political foggiess that has arisen over this
20 18 acres, which just totally flabbergasts -- I can't
21 even conceive it in my mind, the issues with this,
22 considering that we've sold the Town out over in the
23 last three years for -- I forget how many homes. I
24 don't know if there's -- anymore, I can't even remember.

1 1,800 homes on the books? 1,600 homes on the books? A
2 lot of homes we've permitted and annexed into the Town.

3 But now that we're talking about a small
4 parcel that certainly links to one of the most important
5 things this town has faced and really was not dealt with
6 over the past five years, it kind of surprises me.

7 But two is the real issue, because
8 obviously, if they don't get the 18 acres, they are
9 saying they are not going to pay us for it. It makes
10 sense to me.

11 COUNCILWOMAN ABRAHAM: So Mr. Mayor, do I
12 make a motion -- change my motion to encompass the
13 changes on section -- well --

14 MAYOR POST: Section three.

15 COUNCILWOMAN ABRAHAM: Number two, the
16 90 days, and also section three that Mr. Brady had
17 mentioned?

18 MAYOR POST: To clarify, yeah, and I would
19 read that out loud. It's the last sentence in section
20 three.

21 MR. BRADY: After the word boundary in
22 section three, including all property annexed into the
23 Town, and that would be before the word shall.

24 MAYOR POST: Uh-huh.

1 COUNCILWOMAN ABRAHAM: Okay. So --

2 MAYOR POST: And I feel they will have no
3 problem with that, because it's already -- it is in
4 there, but just in another terminology.

5 COUNCILWOMAN HUDSON: In section two,
6 weren't you going to say something about the Sam Lucas
7 property?

8 COUNCILMAN PRETTYMAN: Excuse me one moment.

9 COUNCILWOMAN ABRAHAM: Excuse me. We're on
10 one section.

11 COUNCILWOMAN HUDSON: Okay.

12 MR. BRADY: After the word boundary and
13 before the word shall, it would be the words including
14 all property annexed into the Town.

15 MAYOR POST: Right. And that will take care
16 of this in this old part of this agreement, in this
17 section.

18 MR. BRADY: That takes care of --

19 MAYOR POST: The concerns of the question of
20 the Sam Lucas, which I know they were comfortable paying
21 for.

22 MR. BRADY: Right.

23 MAYOR POST: But she wants it spelled out
24 differently, and that's fine.

1 MR. BRADY: Additional language that could
2 be added in section two, after the word agreement and
3 before the period would be, and the connection fees
4 waived in the contract for this parcel -- and the this
5 is referring to the 18-acre parcel -- shall become
6 payable under paragraph 14 of the agreement.

7 That clarifies it. If those 18 acres,
8 since it's been included in the Town and annexed earlier
9 this --

10 MAYOR POST: In the formula.

11 MR. BRADY: -- in May. It was annexed into
12 the Town -- that the waiver for that would become void
13 if the 18 acres is not sold by the Town to TESI for the
14 construction of the plant.

15 MAYOR POST: Uh-huh. Read that again --

16 MR. BRADY: So the three -- and it would be
17 after the word agreement --

18 MAYOR POST: Right.

19 MR. BRADY: -- and before the period, you
20 would insert the words, and the connection fees waived
21 and the contract for this parcel shall become payable --

22 MAYOR POST: Perfect.

23 MR. BRADY: -- under paragraph 14 of the
24 agreement.

1 MAYOR POST: Perfect.

2 MR. BRADY: Paragraph 14 under the contract
3 with Tidewater is the paragraph that shows the monies
4 that are due and payable under the agreement.

5 MAYOR POST: Perfect. So do you want to add
6 those --

7 COUNCILWOMAN ABRAHAM: So would you like me
8 to withdraw my original motion or --

9 MAYOR POST: No, just amend your --

10 COUNCILWOMAN ABRAHAM: -- or just amend?
11 Okay.

12 MR. BRADY: To include that language I just
13 read.

14 COUNCILWOMAN ABRAHAM: I would like to amend
15 my original motion to include the 90 days in section two
16 and the verbiage added at the end of section two and the
17 additional verbiage added after the word boundary but
18 before the word shall in section three. Okay?

19 MAYOR POST: And provide approval for the
20 Mayor to sign.

21 8:18:54 COUNCILWOMAN ABRAHAM:
22 (Unintelligible).

23 MAYOR POST: Well, you'll need approval.
24 Add to your motion for approval for signature.

1 COUNCILWOMAN ABRAHAM: Approval for
2 signature for the Mayor to sign.

3 COUNCILMAN PRETTYMAN: Second.

4 MAYOR POST: So we've got a possession and a
5 second. All in favor say aye.

6 COUNCILWOMAN HUDSON: Wait. Have we closed
7 discussion for now? I know you were --

8 COUNCILWOMAN ABRAHAM: Oh, my God.

9 COUNCILWOMAN HUDSON: I just have another
10 question.

11 MAYOR POST: Okay.

12 COUNCILWOMAN HUDSON: It said in the
13 agreement that -- Let's see -- in that number four, the
14 due diligence requirements set forth on page 14 of the
15 agreement are hereby deemed satisfied.

16 Sir, when I look back on page 14, there's a
17 considerable amount on here, page 14, that also refers
18 to sections 14 and 15 shall be considered final and
19 binding at the end of the due diligence period. So that
20 goes back, all the way back to 14, 15, section 14,
21 section 15.

22 The one thing I have under section 14, a
23 question, is all existing infrastructure relating to the
24 wastewater in the amount of \$2 million, that's what they

1 were going to pay us. And if we accept the amendment as
2 it's written and we are accepting this \$2 million for
3 our infrastructure, sir, they haven't even finished
4 their valuation report yet to tell us how much they're
5 going to -- tell us that they're going to pay for it.

6 So here without even finishing the valuation
7 report to determine what our assets are actually worth,
8 if we agree to that number four, then we're saying:
9 Okay. We're going to take two million, regardless of
10 the valuation. It might be worth more than two million.
11 So that's a question I have, is once again, is Milton --

12 MAYOR POST: This has already been voted on.

13 COUNCILWOMAN HUDSON: -- getting everything
14 it should be getting?

15 COUNCILWOMAN ABRAHAM: We're not going over
16 the entire contract again. We were only tonight --

17 MAYOR POST: Right.

18 COUNCILWOMAN ABRAHAM: -- on this small
19 part.

20 COUNCILWOMAN HUDSON: I know. But the
21 amendment, the amendment refers to page 14 in the
22 contract. And page 14 in the contract refers to
23 sections 14 and 15. So this simple, little clause is
24 not as simple as it seems, because it refers to a quite

1 lengthy amount in the contract.

2 MAYOR POST: But they are going to be able
3 to meet during the due diligence period, correct?

4 8:21:25 UNKNOWN SPEAKER: (Unintelligible).

5 MAYOR POST: Oh.

6 COUNCILWOMAN HUDSON: It says -- it says in
7 the amendment that due diligence requirements set forth
8 on page 14 of the agreement are hereby deemed satisfied.
9 So that would indicate to me that you are satisfied with
10 them receiving -- with us receiving only \$2 million for
11 our infrastructure. And I question that, because TESI
12 hasn't even finished the valuation report on what our
13 assets are worth. And at one point --

14 MAYOR POST: I know you've been working on
15 that, George. What is the --

16 MR. DICKERSON: We spoke 8:22:05
17 (unintelligible) before TESI, supposedly delivering it
18 8:22:11 (unintelligible) with Bob Kerr of Cabe
19 Associates, our engineer. And I do not know that that
20 8:22:16 (unintelligible).

21 COUNCILWOMAN ABRAHAM: Well, it says it in
22 the beginning.

23 COUNCILWOMAN HUDSON: So I would ask that we
24 wait until we get that report before we accept this

1 clause number four, because --

2 MAYOR POST: Clause number four has
3 already -- the clause number four --

4 COUNCILWOMAN HUDSON: On the second page of
5 the amendment.

6 MAYOR POST: The due diligence --

7 COUNCILWOMAN HUDSON: Yes, it says they are
8 deemed satisfied. And page 14 --

9 MAYOR POST: Uh-huh.

10 COUNCILWOMAN HUDSON: -- refers, also, at
11 the bottom of page 14 --

12 COUNCILWOMAN ABRAHAM: We're not --

13 COUNCILWOMAN HUDSON: -- that refers to
14 sections 14 and 15. So when that --

15 MAYOR POST: Yeah.

16 COUNCILWOMAN HUDSON: -- one little sentence
17 in that amendment --

18 MAYOR POST: It's the date, though. It
19 still -- they have to --

20 COUNCILWOMAN HUDSON: -- covers pages 11,
21 12, 13, and 14 in the contract. So the amendment is
22 considerable. It's just one little sentence in the
23 amendment, but it covers a considerable amount of
24 material in the contract. It refers to quite a bit.

1 And I'm not satisfied that we should only accept two
2 million for our infrastructure when the valuation report
3 has not even be completed that they're doing, that
4 they're going to tell us what they're going to pay us.

5 MAYOR POST: And it says here in the second
6 paragraph, whereas the agreement provides for a due
7 diligence period of four months beginning on
8 February 24, 2007, with the agreement becoming fully
9 effective upon satisfactory completion of the due
10 diligence, which means February 24th.

11 COUNCILWOMAN ABRAHAM: 8:23:51
12 (unintelligible), correct?

13 MR. BRADY: In the contract, Mr. Mayor and
14 members of Council, the price was established as
15 follows: That of the \$6.4 million -- and I'm on page 11
16 in the contract under number 14 -- saying all existing
17 infrastructure relating to wastewater in the amount of
18 \$2 million, that was the arm's length negotiation as
19 what February said, what was determined in February to
20 be the value of the infrastructure of the wastewater
21 plant, the pipes serving underground, and the connection
22 that was owned by the Town.

23 So if it comes back valued at less than \$2
24 million, the Town has made a bargain. If it comes back

1 worth more than \$2 million -- I would also note that in
2 our asset report and in the audits, that has been
3 depreciated down to no value. So when the \$2 million
4 was negotiated as part of those negotiations, I was
5 trying to get some value for something that, according
6 to depreciation schedules, had already been fully
7 depreciated.

8 I do not believe the report that -- but I am
9 not a mind reader. I can't value property like that. I
10 just know that when I was involved in the negotiations,
11 I asked for a value to be determined to that. And when
12 I checked with the auditor, he told me that he was
13 giving the current plant, because it was going to have
14 to be either reconstructed or torn down, no value and
15 said that the value was in the pipes and that some of
16 the pipes would need to be replaced because some of them
17 were as up to over 50 years old. And so the \$2 million
18 was freely negotiated.

19 If the value comes in higher than \$2
20 million, then the Town may not have gotten a bargain.
21 But that would have to call for a change in the
22 agreement.

23 As I read paragraph number four, there were
24 requirements that had to be done from each side for

1 that. And with the exception of the -- since it has
2 been annexed but it has not been provided further in
3 paragraph two, that contingency was written in. The
4 contingency about Senate Bill 77 was put in, because
5 that was not known in February that that could have an
6 effect and that it is saying that as of the date -- all
7 of the things that were due to be done by June 24th, in
8 order to make this a fully executed, legally bound
9 document between the two parties or between the parties
10 deemed to be satisfied as of the date of the signing of
11 this amendment.

12 MAYOR POST: Right. And it is my
13 understanding, by the 24th they plan to pay us for
14 everything in this contract. That's stated in the
15 contract.

16 MR. DICKERSON: That's the way it's paid
17 out.

18 MAYOR POST: As it's paid out, according to
19 the contract.

20 MR. DICKERSON: The initial payment was 2.5
21 million.

22 MAYOR POST: 2.5 million. So we have a
23 motion and a second on the floor.

24 COUNCILMAN FREY: Can we take a roll call

1 vote, Mr. Mayor?

2 MAYOR POST: Yes. All right. Councilwoman
3 Abraham.

4 COUNCILWOMAN ABRAHAM: Yes.

5 MAYOR POST: Councilman Prettyman.

6 COUNCILMAN PRETTYMAN: Yes.

7 MAYOR POST: Councilman Frey.

8 COUNCILMAN FREY: Yes.

9 MAYOR POST: Councilwoman Melson.

10 COUNCILWOMAN ABRAHAM: Hudson.

11 MAYOR POST: Hudson. Why do I keep saying
12 Melson? You know, I cannot get that. Councilwoman
13 Hudson.

14 COUNCILWOMAN HUDSON: No. I think it needs
15 some more changes, so I'm voting no.

16 MAYOR POST: And myself, as Mayor, votes
17 yes. Motion carried. Now we need a motion to go
18 into -- there's nothing under New Business -- a motion
19 to go into executive session.

20 MR. BRADY: Yes.

21 MAYOR POST: Yeah, we need a motion to go
22 into executive session.

23 COUNCILMAN FREY: So moved.

24 MAYOR POST: Okay. We have a motion and a

1 second. All in favor, say aye.

2 COUNCILMAN PRETTYMAN: Aye.

3 COUNCILWOMAN ABRAHAM: Aye.

4 COUNCILMAN FREY: Aye.

5 COUNCILWOMAN HUDSON: Aye.

6 MAYOR POST: Aye. Opposed? Motion carried.

7 (Following executive session, not recorded:)

8 MAYOR POST: We have a motion to come out of

9 executive session and a second. All in favor, say aye.

10 COUNCILMAN FREY: Aye.

11 COUNCILWOMAN HUDSON: Aye.

12 COUNCILWOMAN ABRAHAM: Who made the motion?

13 MAYOR POST: Councilman Frey, I thought,

14 seconded it. Did you make the motion to come out,

15 Noble?

16 COUNCILMAN PRETTYMAN: Yes.

17 COUNCILWOMAN ABRAHAM: Noble, okay.

18 MAYOR POST: And all in favor, say aye.

19 COUNCILMAN PRETTYMAN: Aye.

20 COUNCILWOMAN ABRAHAM: Aye.

21 COUNCILMAN FREY: Aye.

22 COUNCILWOMAN HUDSON: Aye.

23 MAYOR POST: Aye. Opposed? Motion carried.

24 COUNCILMAN FREY: I have one thing that I

1 want to bring up at this -- Well, I should have brought
2 it up. But it is nothing dealing with anything. It's a
3 really simple thing.

4 I had talked with Chief Phillips a couple of
5 weeks ago, and you know, the town police department is,
6 you know, getting kind of small as we grow. And I was
7 looking at Young's Funeral Home and Dr. White, and maybe
8 we can look at that or our chief can look at that and
9 Mr. Dickerson and all can possibly look at it. And over
10 the period of the next few years they can tear down,
11 build a state-of-the-art police department.

12 COUNCILWOMAN ABRAHAM: Do you still have a
13 building permit? We used to have one.

14 MAYOR POST: Well, we can turn that over to
15 the -- but we can't do it tonight.

16 COUNCILMAN PRETTYMAN: No, no, no. I'm
17 just --

18 COUNCILWOMAN ABRAHAM: No.

19 MAYOR POST: Yeah, but we'll --

20 COUNCILMAN PRETTYMAN: I'm just throwing it
21 out tonight.

22 MAYOR POST: Yeah, we'll put it on the
23 agenda. Throw it out, but then we'll put it on the
24 agenda formally. And that's fine, yes.

1 COUNCILMAN PRETTYMAN: Yes. Okay.

2 MAYOR POST: So make sure that George gets
3 it on the next agenda.

4 COUNCILMAN PRETTYMAN: Yes.

5 MAYOR POST: That's fine.

6 COUNCILMAN PRETTYMAN: Okay. That's all. I
7 just wanted to --

8 MAYOR POST: Okay. So do we have a motion
9 to adjourn?

10 COUNCILMAN PRETTYMAN: So moved.

11 COUNCILWOMAN ABRAHAM: Second.

12 MAYOR POST: Okay. All in favor, say aye.

13 COUNCILMAN PRETTYMAN: Aye.

14 COUNCILWOMAN ABRAHAM: Aye.

15 COUNCILMAN FREY: Aye.

16 COUNCILWOMAN HUDSON: Aye.

17 MAYOR POST: Aye. Opposed? Motion carried.

18 COUNCILWOMAN ABRAHAM: Thank you.

19 MAYOR POST: We adjourn at eight --
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22
23
24

1 State of Delaware.)
2 Kent County)

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CERTIFICATE OF REPORTER

6 I, Cheryl A. Anthony, Delaware Certified Shorthand
7 Reporter and Notary Public, do hereby certify that the
8 foregoing record, pages 1 to 68 inclusive, is a true and
9 accurate transcript of my stenographic notes, taken to
10 the best of my ability via audio recording, from the
11 hearing taped on June 12, 2007, in the above-captioned
12 matter.

13

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 and seal this ____ day of _____ 2007.

16

17

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19

20

Cheryl A. Anthony
Delaware CSR
Certification No. 107-PS
(Permanent Certification)

21

22

23

24